

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ORBIT ONE COMMUNICATIONS, INC.,  
and DAVID RONSEN,

Plaintiffs/Counterclaim Defendants,

- against -

NUMEREX CORP.,

Defendant/Counterclaim Plaintiff.

Civil Action No. 08-0905 (LAK) (JCF)

**NOTICE OF MOTION FOR A JURY  
INSTRUCTION ON THE ISSUE OF  
SPOILIATION OF EVIDENCE AND  
OTHER RELIEF**

NUMEREX CORP.,

Plaintiff/Counterclaim Defendant,

- against -

SCOTT ROSENZWEIG, GARY NADEN, and  
LAVA LAKE TECHNOLOGIES, LLC,

Defendants/Counterclaim Plaintiffs.

Civil Action No. 08-6233 (LAK) (JCF)

GARY NADEN, DAVID RONSEN, SCOTT  
ROSENZWEIG, ORBIT ONE  
COMMUNICATIONS, INC., and LAVA LAKE  
TECHNOLOGIES, LLC,

Plaintiffs/Counterclaim Defendants,

- against -

NUMEREX CORP.,

Defendant/Counterclaim Plaintiff.

Civil Action No. 08-11195 (LAK) (JCF)

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of Defendant/Counterclaim Plaintiff Numerex Corp.'s ("Numerex's") Motion for a Jury Instruction on the Issue of Spoliation of Evidence and Other Relief, and the accompanying Declaration of Emily A. Kim, with attached exhibits, the accompanying Declaration of Robert Bolstad, with attached exhibit, and all pleadings and proceedings heretofore had herein, Numerex, by its undersigned counsel, will move this Court, pursuant to Federal Rules of Civil Procedure 16 and 37 and the inherent power of the Court to instruct juries and supervise proceedings before it, before the Honorable Lewis A. Kaplan, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 12D, New York, New York 10007, at a date and time to be determined in accordance with Judge Kaplan's rules, for an Order: 1) granting Numerex a jury instruction at trial permitting the jury to draw an adverse inference from Plaintiffs/Counterclaim Defendants Orbit One Communications, Inc. ("Orbit One") and David Ronsen's spoliation of evidence; 2) directing Orbit One and Ronsen to reimburse Numerex for its attorneys' fees and costs associated with bringing both the instant motion and its motion for sanctions, dated August 27, 2008; and providing such other relief that the Court deems proper and just.

Dated: New York, New York  
March 8, 2010

Respectfully submitted,

ARNOLD & PORTER LLP

By



Kent A. Yalowitz

*Kent.Yalowitz@aporter.com*

Emily A. Kim

399 Park Avenue  
New York, New York 10022-4690  
Telephone: (212) 715-1000  
Facsimile: (212) 715-1399

*Attorneys for Numerex Corp.*

To: R. Scott Thompson, Esq.  
Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, NJ 07068

*Attorneys for Orbit One Communications, Inc.,  
David Ronsen, and Lava Lake Technologies, LLC.*

Howard J. Kaplan, Esq.  
Arkin Kaplan Rice LLP  
590 Madison Avenue  
New York, NY 10022

*Attorneys for Scott Rosenzweig and Gary Naden*